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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION

IN RE RUBBER CHEMICALS ANTITRUST
LITIGATION

) MDL Docket No. C 04-1648 MJJ
) Individual Case No. C 06-5700 MJJ
)
)
)

THIS DOCUMENT RELATES TO:

**JOINT CASE MANAGEMENT
STATEMENT [AND] PROPOSED
CASE MANAGEMENT ORDER**

Bridgestone Americas Holding, Inc., et al.
v. Chemtura Corporation, et al.

The Parties to the above-entitled action jointly submit this Case Management Statement and Proposed Order and request that the Court adopt it as its Case Management Order in this case.

I. JURISDICTION AND SERVICE

Pursuant to 28 U.S.C. § 1407, the Judicial Panel on Multidistrict Litigation transferred this action to this Court for coordinated multi-district litigation pretrial proceedings on

1 September 19, 2006. The Court has jurisdiction under 28 U.S.C. §§ 1331 and 1337(a).

2 No issues have been raised regarding personal jurisdiction or venue. All Defendants have
3 been served with the action.

4 **II. DESCRIPTION OF EVENTS UNDERLYING ACTION**

5 On June 29, 2006, plaintiffs Bridgestone Americas Holding, Inc., Bridgestone Firestone
6 North American Tire, LLC, Pirelli Tire, LLC and Bandag, Incorporated ("Plaintiff" or
7 "Bandag"), opt-outs from the federal rubber chemicals class action formerly before this Court,
8 filed this action in the Middle District of Tennessee alleging that the defendants engaged in an
9 unlawful price-fixing conspiracy in violation of Sherman Act § 1 and Clayton Act § 4.
10 Defendants Chemtura Corporation and Uniroyal Chemical Company, Inc. (collectively
11 "Chemtura") filed a Notice of Tag-Along Action with the Judicial Panel for Multi-District
12 Litigation (the "MDL Panel") requesting that the action be transferred to this Court. The request
13 was unopposed. On August 3, 2006, the MDL Panel issued a conditional order transferring the
14 action to this Court for coordinated pretrial proceedings. On September 22, 2006, plaintiffs filed
15 an Amended Complaint in this Court, which, *inter alia*, added the following four individual
16 defendants: James J. Conway ("Conway"), Michael J. Duchesne ("Duchesne"), Joseph B.
17 Eisenberg ("Eisenberg"), and Peter D. Welch ("Welch") (collectively "Individual Defendants").
18 On or about January 5, 2007, plaintiffs Bridgestone Americas Holding, Inc. and Bridgestone
19 Firestone North American Tire, LLC, having reached a settlement with Chemtura, voluntarily
20 dismissed their complaints with prejudice. Pirelli Tire, LLC did the same on or about March 6,
21 2007. As a result, Bandag is the sole plaintiff in this action.

22 **III. THE PRINCIPAL FACTUAL ISSUES WHICH THE PARTIES DISPUTE**

23 Bandag alleges that Chemtura, along with other non-party rubber chemicals
24 manufacturers, conspired to "fix, raise, maintain and stabilize the price of, and allocate
25 customers and the market for, Rubber Chemicals sold within and outside the United States."
26 (Am. Compl. ¶ 87.) As a result, Bandag claims it suffered injury by paying higher prices for
27 rubber chemicals than it would have paid in the absence of the alleged conspiracy and seeks
28 damages for its alleged injuries beginning in 1993 and continuing into 2003. (*Id.* ¶¶ 1, 2.)

1 Chemtura denies that Bandag has suffered any injury and damages caused by the alleged
2 conspiracy.

3 The following is merely an exemplary list of disputed factual issues, and the Parties
4 reserve their rights to supplement it. Among other factual issues, the Parties dispute whether:

5 (a) the Defendants entered into the agreement alleged in the Amended Complaint
6 with respect to the relevant Rubber Chemicals purchased by Bandag.

7 (b) the Defendants' alleged actions had the effect of setting the price of the relevant
8 Rubber Chemicals at supracompetitive levels.

9 (c) as a result of the Defendants' alleged actions, Bandag paid supracompetitive
10 prices for the various Rubber Chemicals it claims to have purchased.

11 (d) Bandag suffered any injury in fact by virtue of the conduct alleged in the
12 Amended Complaint.

13 **IV. THE PRINCIPAL LEGAL ISSUES WHICH THE PARTIES DISPUTE**

14 The following is merely an exemplary list, and the Parties reserve their rights to
15 supplement it. Among other legal issues, the Parties dispute whether:

16 (a) the Defendants reached an agreement with others to fix the prices of the various
17 Rubber Chemicals allegedly purchased by Bandag over the course of the relevant time period
18 alleged in the Amended Complaint, in violation of Sherman Act § 1, 15 U.S.C. § 1.

19 (b) Bandag has sustained an antitrust injury proximately caused by the Defendants'
20 actions as required by Clayton Act § 4, 15 U.S.C. § 15.

21 (c) Bandag has suffered any cognizable damages.

22 (d) Bandag mitigated its damages.

23 (e) Bandag's claims are barred by the statute of limitations.

24 **V. MOTIONS**

25 Chemtura filed a Partial Motion to Dismiss the Amended Complaint on November 13,
26 2006. The Individual Defendants filed Motions to Dismiss on January 16, 2007 (Duchesne,
27 Eisenberg, and Welch) and January 29, 2007 (Conway). The Court recently issued an Order
28 granting in part and denying in part the Motions. *See* Section XVI, *infra*.

Pursuant to a Discovery Conference and Scheduling Order issued by Magistrate Judge Zimmerman on August 15, 2007, Bandag filed a Motion for Protective Order concerning the scope of Chemtura's Notice of Deposition to Bandag pursuant to Rule 30(b)(6) of the Federal Rules of Civil Procedure. If Judge Zimmerman determines a hearing to be necessary, it will take place before him on September 19, 2007.

Other than additional discovery-related motions that may arise and the dispositive motions referenced in the proposed schedule below, the Parties do not anticipate any other motions at this time.

VI. AMENDMENT OF PLEADINGS

The Parties do not anticipate amending the pleadings at this time.

VII. EVIDENCE PRESERVATION

Counsel for the respective parties have instructed the Parties to preserve all documents, including electronic documents and data that relate to this litigation.

VIII. DISCLOSURES

Bandag and Chemtura have exchanged initial disclosures pursuant to Federal Rule of Civil Procedure 26.

The Individual Defendants have not yet provided initial disclosures pursuant to Federal Rule of Civil Procedure 26. However, they will do so pursuant to the schedule below.

IX. DISCOVERY

Bandag and Chemtura are currently engaged in on-going discovery, and both have propounded and responded to requests for production of documents. Bandag has also responded to interrogatories, and requests for admission. Chemtura has also recently propounded on Bandag additional interrogatories. Bandag and Chemtura have also scheduled Bandag's Fed. R. Civ. Proc. 30(b)(6) depositions and are in the process of scheduling individual depositions.

Pursuant to the Stipulation Regarding Temporary Stay of Discovery as to Individual Defendants and Admissibility of Depositions lodged with the court on July 30, 2007 (*see* MDL Docket Entry No. 541; Individual Case Docket Entry No. 138), discovery against or by the Individual Defendants was temporarily stayed pending a decision by the Court on the motions to

dismiss or until July 15, 2007, whichever date is earlier. The Parties anticipate that discovery with respect to the Individual Defendants will commence soon.

The Parties anticipate additional written discovery and depositions.

The Parties have agreed to the following discovery plan:

1. Limitations on Merits Discovery

The following limitations shall apply to discovery:

(a) Number of Depositions

Fed. R. Civ. P. 30(a)(2)(A) limiting the number of depositions to ten is waived.

(b) Duration of Depositions

Fed. R. Civ. P. 30(d)(2) limiting the duration of a deposition to one day of seven hours is NOT waived or modified.

(c) Interrogatories

Fed. R. Civ. P. 33 limiting the number of interrogatories to 25 per party is NOT waived.

2. Experts

Expert discovery will be subject to the Court's Order on the Stipulation regarding Expert Discovery dated July 13, 2007. (See MDL Docket Entry No. 539; Individual Case Docket Entry No. 136.)

3. Discovery Dispute Procedures

In the event that a discovery dispute arises, the Parties to the dispute shall comply with the procedures for resolution set forth in the Court's Fourth Discovery Order, dated June 6, 2006.

X. CLASS ACTIONS

This individual action is not a class action.

XI. RELATED CASES

This action is part of *In Re Rubber Chemicals Litigation*, MDL Docket No. C 04-1648 MJJ.

1 **XII. RELIEF**

2 Bandag seeks money damages, including treble damages and/or restitution. Bandag is
3 unable to state its damages with precision at this time because that determination will require
4 discovery and expert analysis. Bandag also seeks cost of this suit and reasonable attorneys' fees.

5 **XIII. SETTLEMENT AND ADR**

6 Chemtura and Bandag have had extensive settlement communications and do not believe
7 that further discussions at this time would be fruitful.

8 The Parties have not been assigned to or agreed to any ADR procedures and believe that
9 an ADR referral is premature at this time.

10 **XIV. CONSENT TO MAGISTRATE JUDGE FOR ALL PURPOSES**

11 The Parties do not consent to assignment of this case to a Magistrate Judge.

12 **XV. OTHER REFERENCES**

13 This case is not suitable for binding arbitration or a special master; this case was
14 transferred to this Court by the Judicial Panel on Multidistrict Litigation.

15 **XVI. NARROWING OF ISSUES**

16 On August 15, 2007, this Court granted Defendants' Motion to Dismiss Bandag's
17 allegations of foreign injuries, narrowing the issues in dispute. The Parties have not yet
18 evaluated the specific issues for further dispositive motions, if any, in this case.

19 **XVII. EXPEDITED SCHEDULE**

20 The Parties have agreed to the schedule set forth below, *see* Section XVIII, *infra*, and do
21 not believe that this case can be handled on a more expedited basis.

22 **XVIII. SCHEDULING**

23 The Parties have met and conferred and have agreed on the following Proposed Case
24 Management Schedule:

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Item	Proposed Deadlines/Dates (For All Parties)
Discovery Begins (between Individual Defendants and Bandag only)	July 15, 2007 (between individual defendants and Bandag only)
Chemtura's Answer to Bandag's Amended Complaint	August 29, 2007
Initial Disclosures (between Individual Defendants and Bandag only)	September 12, 2007 (between individual defendants and Bandag only)
Individual Defendants' Answer to Bandag's Amended Complaint	September 19, 2007
Plaintiff's Expert Reports & Back-Up	December 10, 2007
Defendants' Expert Reports & Back-Up	January 7, 2008
Plaintiff's Rebuttal Reports & Back-Up	February 4, 2008
Deposition of Plaintiff's Experts	Completed by February 19, 2008
Deposition of Defendants' Experts	Completed by March 4, 2008
Discovery Cut-Off	April 10, 2008
Dispositive Motions	April 30, 2008
Oppositions to Dispositive Motions	May 29, 2008
Replies in support of Dispositive Motions	June 19, 2008
Hearing on Dispositive Motions	June 30, 2008
Remand Date	July/August 2008
Pretrial Conference	September/October 2008
Trial Date	October/November 2008

XIX. TRIAL

Bandag has requested that this case be tried by a jury. The expected length of trial is four weeks.

XX. DISCLOSURE OF NON-PARTY INTERESTED ENTITIES OR PERSONS

1. Bandag filed a Second Amended Certification of Interested Entities or Persons, pursuant to Civil Local Rule 3-16, with the Court on August 22, 2007. The contents of the certification are as follows:

- Bandag, Incorporated, now Bridgestone Bandag, LLC, a wholly-owned subsidiary of Bridgestone Americas Holding, Inc.;
- Bridgestone Americas Holding, Inc., a subsidiary of Bridgestone Corporation; and
- Bridgestone Corporation, parent corporation and publicly held company holding 10% of Bridgestone Americas Holding, Inc.

2. Chemtura filed a Certification of Interested Entities or Persons, pursuant to Civil Local Rule 3-16, with the Court on November 13, 2006. The contents of the certification are as follows:

- Chemtura Corporation (formerly known as Crompton Corporation), a publicly held company with no parent corporation; and
- Uniroyal Chemical Company, Inc. (then known as Chemtura USA Corporation), a wholly-owned subsidiary of Chemtura Corporation.

Uniroyal Chemical Company, Inc. filed an Amended Certification of Interested Entities or Persons, pursuant to Civil Local Rule 3-16, with the Court on June 22, 2007. The contents of the certification are as follows:

- As of December 31, 2004, Crompton Sales Company, Inc. merged with Uniroyal Chemical Company, Inc., and the name of Uniroyal Chemical Company, Inc. (the surviving entity) was changed to Crompton Manufacturing Company, Inc.;
- As of July 1, 2005, Crompton Corporation (Uniroyal Chemical Company, Inc.'s parent corporation) merged with Great Lakes Chemical Company and the combined company became Chemtura Corporation;
- As of December 30, 2005, Crompton Manufacturing Company, Inc. changed its name to Chemtura USA Corporation; and
- As of December 31, 2006, Chemtura USA Corporation merged into Chemtura Corporation. Chemtura has no parent corporation. Additionally, no publicly held company owns 10% or more of Chemtura's stock.

3. The Individual Defendants have not yet filed a Certification of Interested Entities or Persons with the Court.

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Dated: October 2, 2007

Respectively submitted,

CROWELL & MORING LLP

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Dated: October __, 2007

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Attorneys for Defendants Chemtura Corporation
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(now merged into Chemtura Corporation)

1 Respectively submitted,

2
3 Dated: September __, 2007

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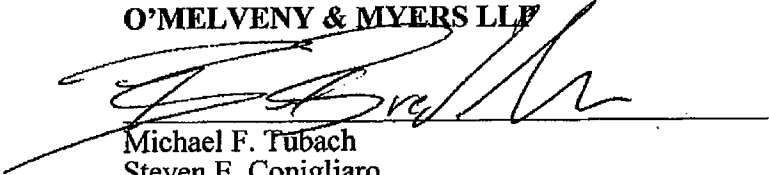
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(formerly known as Crompton Corporation) and
28 Uniroyal Chemical Company, Inc. (now merged into
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ADDITIONAL SIGNATURE PAGE TO
JOINT CASE MANAGEMENT STATEMENT

Dated: *September 26*
~~August~~ __, 2007

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Dated: August __, 2007

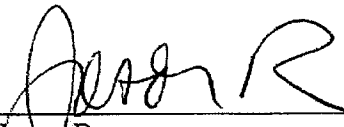
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JOINT CASE MANAGEMENT STATEMENT

Dated: August __, 2007

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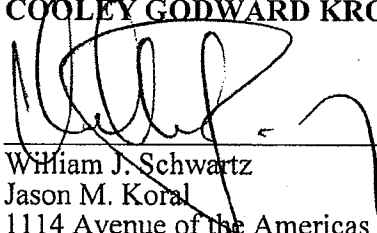
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Dated: August __, 2007

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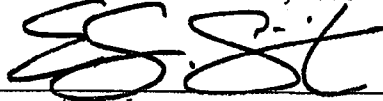
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ADDITIONAL SIGNATURE PAGE TO
JOINT CASE MANAGEMENT STATEMENT

Dated: September 20
~~August~~, 2007

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Attorneys for Defendant Peter D. Welch

[PROPOSED] CASE MANAGEMENT ORDER

The Court has considered the Joint Case Management Statement submitted by the Parties, and hereby finds and orders the following which shall govern the proceedings in *Bridgestone Americas Holding, Inc., et al. v. Chemtura Corporation, et al.*, Individual Case No. C 06-5700 MJJ:

1. Limitations on Merits Discovery

The following limitations shall apply to discovery:

(a) Number of Depositions

Fed. R. Civ. P. 30(a)(2)(A) limiting the number of depositions to ten is waived.

(b) Duration of Depositions

Fed. R. Civ. P. 30(d)(2) limiting the duration of a deposition to one day of seven hours is NOT waived or modified.

(c) Interrogatories

Fed. R. Civ. P. 33 limiting the number of interrogatories to 25 per party is NOT waived.

2. Experts

Expert discovery will be subject to the Court's Order on the Stipulation regarding Expert Discovery dated July 13, 2007. (See MDL Docket Entry No. 539; Individual Case Docket No. 136.)

3. Discovery Dispute Procedures

In the event that a discovery dispute arises, the Parties to the dispute shall comply with the procedures for resolution set forth in the Court's Fourth Discovery Order, dated June 6, 2006.

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4. Schedule

The following schedule shall govern these proceedings:

Item	Deadlines/Dates
Discovery Begins (between Individual Defendants and Bandag only)	July 15, 2007 (between individual defendants and Bandag only)
Chemtura's Answer to Bandag's Amended Complaint	August 29, 2007
Initial Disclosures (between Individual Defendants and Bandag only)	September 12, 2007 (between individual defendants and Bandag only)
Individual Defendants' Answer to Bandag's Amended Complaint	September 19, 2007
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Replies in support of Dispositive Motions	June 19, 2008
Hearing on Dispositive Motions	June 30, 2008
Remand Date	July/August 2008
Pretrial Conference	September/October 2008
Trial Date	October/November 2008

IT IS SO ORDERED.

Dated: _____

Honorable Martin J. Jenkins
United States District Court for the
Northern District of California

DC4043292 (CAM NO. 1016092.001)